

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 333 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

NANUBHAI CHANDUBHAI KAHAR

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for the Petitioner .

MR. RM CHAUHAN , APP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/07/98

ORAL JUDGEMENT

Nanubhai Chandubhai Kahar, the father of the
externee Annubhai Nanubhai Kahar, by way of this petition
under Article 226 of the Constitution of India has
challenged the order of his externment dated 22-7-97
Annexure "B" to the petition passed by the Deputy
Commissioner of Police, Surat-respondent No.1 and which
is confirmed by respondent No.2-Dy. Secretary, Home

Department vide order dated 12-1-98 at Annexure"C" to the petition externing the externee from the districts of Surat, Bharuch and Valsad.

Since this petition is required to be allowed on the first contention raised by Mr. Kapadia that the subjective satisfaction arrived at by the externing authority is not genuine as required under Section 56 of the Bombay Police Act, that is to say, the persons or victims of the incidents are not willing to come forward to give evidence in public against the externee, it is not necessary for me to refer to and deal with the other contentions and to renarrate the allegations made in the show cause notice as well as the externment order. Reading the notice it is clear that the externing authority-respondent No.1 has stated that so many persons who are victims of the incidents are not willing to come forward to give evidence in public against the externee. However, reading the provisions of Section 56 of the Bombay Police Act, which is mandatory in nature, it requires satisfaction in respect of the witnesses and not in respect of certain witnesses i.e. victims. The Supreme Court in Nawabkhan Abbaskhan vs The State of Gujarat, AIR 1974 SC 1471 has in paragraph 5 observed as under:

"There is also a second ground on which we must hold the externment order to be invalid. It is well settled that it is a mandatory requirement of Section of Section 56 that the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their person or property. This requirement is clearly not satisfied in the present case.....it is clear that the opinion formed by the Deputy Commissioner of Police is only as regards the witnesses who are victims of the said incidents and not as regards the other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56."

In view of this decision, it is clear that the mandatory requirement to be followed by the externing authority is lacking in the impugned order and, therefore, the impugned order is illegal and bad.

In the result the petition is allowed. The order

dated 27-9-97 passed by respondent No.1 and as confirmed by the order dated 12-1-98 passed by respondent No.2 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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